

XXIV
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What insights does the Pelgrave decision
give us on Contribution Notices, and on
TPR enforcement strategy?

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Outline structure

- The relevant legislation – s.38 and s.38A PA04 (Contribution Notices)
- *Pelgrave v The Pensions Regulator* [2025] Pens.L.R. 14
- The ‘material detriment’ test (the likelihood of accrued scheme benefits...), the ‘party’ test (a dictionary definition).
- A ‘series’ of Acts, some features of quantum (the move away from a compensatory approach, disgorgement).

Contribution Notices- s.38 PA04

“(3) The Regulator may issue a contribution notice to a person only if –

(a) the Regulator is of the opinion that the person was a party to an act or a deliberate failure to act which falls within subsection (5),

(b) the person was at any time in the relevant period –

(i) the employer in relation to the scheme, or

(ii) a person connected with, or an associate of, the employer,

...

Contribution Notices- s.38 PA04

“(5) An act or a failure to act falls within this subsection if—

(a) the Regulator is of the opinion that the material detriment test, the employer insolvency test or the employer resources test is met in relation to the act or failure (see sections 38A, 38C and 38E) or that the main purpose or one of the main purposes of the act or failure was—

(i) to prevent the recovery of the whole or any part of a debt which was, or might become, due from the employer in relation to the scheme under section 75 of the Pensions Act 1995 (c. 26)

(deficiencies in the scheme assets), or

(ii) to prevent such a debt becoming due, to compromise or otherwise settle such a debt, or to reduce the amount of such a debt which would otherwise become due

Contribution Notices – s.38A PA04 – meaning of “material detriment”

38A Section 38 contribution notice: meaning of “material detriment test”

*(1) For the purposes of section 38 the material detriment test is met in relation to an act or failure if the Regulator is of the opinion that the act or failure has detrimentally affected in a material way the **likelihood** of accrued scheme benefits being received (whether the benefits are to be received as benefits under the scheme or otherwise)...*

Contribution Notices – s.38(7) PA04 – reasonableness

“(7) The matters within this subsection are—

(a) the degree of involvement of the person in the act or failure to act which falls within subsection (5),

(b) the relationship which the person has or has had with the employer ...

*(c) any connection or involvement which the person has or has had with the scheme,
... (d) – (g)”*

Financial Support Directions – s.43 PA04

(2) The Regulator may issue a financial support direction under this section in relation to such a scheme if the Regulator is of the opinion that the employer in relation to the scheme—

(a) is a service company, or

(b) is insufficiently resourced,

at a time determined by the Regulator which falls within subsection (9)

(“the relevant time”).

...

Financial Support Directions – s.43 PA04

(5) *But the Regulator may issue such a direction to a person only if—*

(a) the person is at the relevant time a person falling within subsection (6), and

(b) the Regulator is of the opinion that it is reasonable to impose the requirements of the direction on that person.

(6) *A person falls within this subsection if the person is—*

(a) the employer in relation to the scheme,

(b) an individual who—

(i) is an associate of an individual who is the employer, but

(ii) is not an associate of that individual by reason only of being employed by him, or

(c) a person, other than an individual, who is connected with or an associate of the employer.

Financial Support Directions – s.43 PA04

(7) The Regulator, when deciding for the purposes of subsection (5)(b) whether it is reasonable to impose the requirements of a financial support direction on a particular person, must have regard to such matters as the Regulator considers relevant including, where relevant, the following matters—

(a) the relationship which the person has or has had with the employer ...

(b) in the case of a person falling within subsection (6)(b) or (c), the value of any benefits received directly or indirectly by that person from the employer

(c) any connection or involvement which the person has or has had with the scheme

(d) the financial circumstances of the person, and such other matters as may be prescribed.

Some Contribution Notice Determination Notices

- Re Carrington Wire DB Pension Scheme (24.4.15)
- Re BHS Pension Schemes (15.1.18)
- Re Meghraj Group Pension Scheme (5.8.20)
- Re Dosco Overseas Engineering Limited (1973) Pension Scheme (31.3.22)
- Danapak Flexibles Retirement Benefit Scheme (26.1.24)

Pelgrave v The Pensions Regulator [2025] Pens L.R. 14 – Facts

- Ann Pelgrave (AP) and her brother (Christopher) were directors of employer (DFL)
- AP also a 25% shareholder in DFL's parent (DFHL), as were Christopher, a further brother, and AP's parents
- Employer scheme in significant deficit
- In September 2015, Christopher offered to buy the other family members' shareholdings
- Christopher stated the purchase was to be funded by drawing down £800,000 against DFL's invoice financing facility with RBS. DFL would then loan the £800,000 to another company in the DFHL group ("Pink"), and the same funds would be used to buy AP's shareholding (and those of her brother and parents)
- No legal advice sought by AP
- Loan written off in December 2023

Pelgrave v The Pensions Regulator [2025] Pens L.R. 14 – argument

- **TPR** - the ultimate result was the withdrawal of £800,000 from the Group, which could have been used to support the Scheme
- Employer covenant ultimately weakened
- AP a party because she was told via email about the proposed funding mechanism and did not object or seek legal advice
- **AP** – throughout my involvement, the money was treated as a loan
- No reason to believe it would not be paid back – the loan was properly recorded in all company accounts
- At no stage did I consider there may be a problem, prior to the sale in 2016
- DFL (employer) and Scheme (Danapak) still solvent

Pelgrave v The Pensions Regulator [2025] Pens L.R. 14

– material detriment

- Tribunal focused upon the word “likelihood” in s.38A(1) PA04 – *“the likelihood of accrued scheme benefits being received.”*
- “[173] Looking at the accounts of DFL, the increased indebtedness would be balanced by the asset the borrowed money was used to acquire (the receivable from Pink/DFG). The question, however, is not whether DFL's accounts balanced, but what impact these arrangements had (or might have) on the likelihood of DFL being able to meet its obligations to the Scheme. To some extent that turns on the answers to the quantitative question, whether the loans DFL made with that money were likely to be repaid and provide a return equal to the cost of borrowing from RBS, and the qualitative question, whether the loans were as liquid as the RBS facility (Could DFL expect to be repaid as quickly as it could borrow from RBS).”

Pelgrave v The Pensions Regulator [2025] Pens L.R. 14 – the “party” test

- “party” undefined
- AP argued she simply sold her shares
- Hierarchy argument – decision-maker (party), procurer (party), ultimate beneficiary (non-party)
- Upper Tribunal – “[167] ... we consider that ‘party to’ should bear its ordinary dictionary meaning. In the words of the Oxford English Dictionary (‘OED’) this is: “With, to, (formerly also in): a person who is concerned in an action or affair, a participant, an accessory.”

Pelgrave v The Pensions Regulator [2025] Pens L.R. 14

– “series” argument

- PA 04 s.38(12) and (13) –

“(12) Subsection (13) applies if the Regulator is of the opinion that –

a) a person was a party to a series of acts or failures to act ...

and ...

c) the material detriment test, the employer insolvency test or the employer resources test is met in relation to the series ...”

Pelgrave v The Pensions Regulator [2025] Pens L.R. 14 – “series” argument

- 2 further “Acts” alleged by the Regulator
- Those 2 further Acts not proven
- Therefore Tribunal did not resolve issue of what constitutes a “series”
- *Shah v The Pensions Regulator* [2023] UKUT 00183, at paragraph 183-184 - will any chronologically ordered sequence of events suffice, or must there be some underlying connection?
- Question still at large

Pelgrave v The Pensions Regulator [2025] Pens L.R. 14

– quantum

- “[183] *The CN regime is also not a compensation regime, it is not designed to compensate a scheme for loss it has suffered. The Upper Tribunal made this point in Shah at [320]...*”
- *Shah*, c/f Warren J in *Re Bonas Group Pension Scheme* [2011] Pens L.R 109, at [193]
- Therefore 2 recent Upper Tribunal decisions refusing to apply a compensatory approach

Pelgrave v The Pensions Regulator [2025] Pens L.R. 14

– quantum

- “[184] *The CN regime is also not (or not primarily) a disgorgement regime, one designed to make the target disgorge all his benefits.*”
- Capital gains tax paid, and monies already gifted to her children, discounted from AP’s Contribution Notice quantum – see paragraphs 206 - 207

Thank you

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